

***United States Court of Appeals
for the Second Circuit***



APPENDIX

No. 77-6130

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES POSTAL SERVICE,
Plaintiff

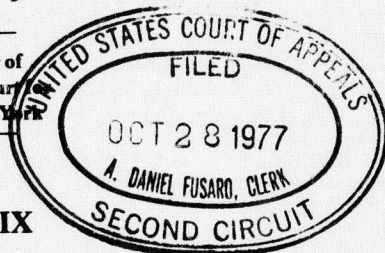
and

NATIONAL ASSOCIATION OF LETTER CARRIERS,
Plaintiff-Intervenor-Appellant,
v.

PATRICIA H. BRENNAN, J. PAUL BRENNAN
d/b/a P.H. BRENNAN HAND DELIVERY,
Defendants-Appellees.

On Appeal From An Order of
The United States District Court
The Western District of New York

JOINT APPENDIX



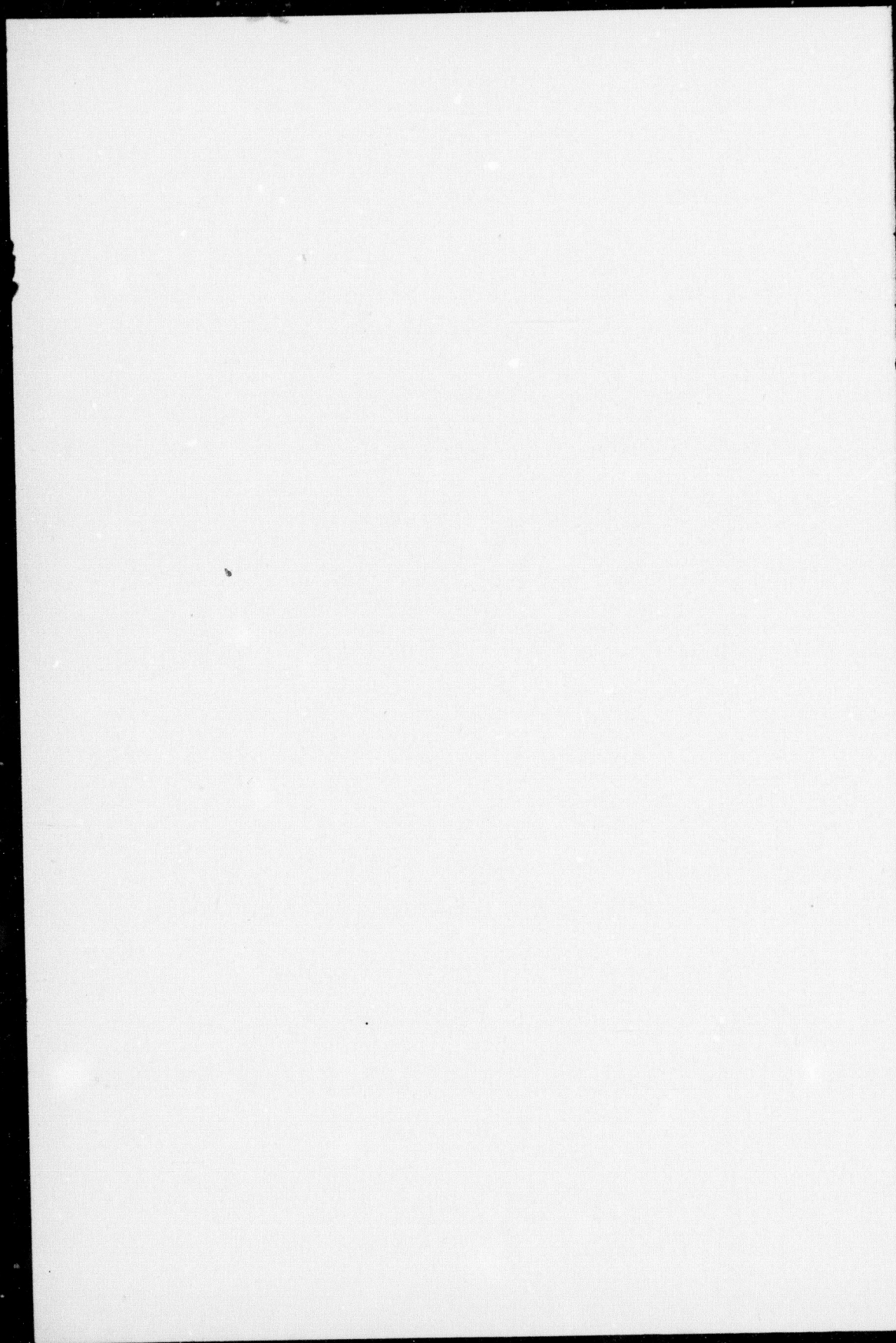
MOZART G. RATNER
PETER J. CARRE
MOZART G. RATNER, P.C.
1900 M Street, N.W.
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Attorneys For Intervenor-
Appellee

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Appellees

PAGINATION AS IN ORIGINAL COPY

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77-6130

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,
-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS, Civ.-77-111
Plaintiff-Intervenor-
Appellant,
-vs-

PATRICIA H. BRENNAN, J. PAUL BRENNAN,
d/b/a P. H. BRENNAN HAND DELIVERY,
Defendants-Appellees.

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tervene
6. Decision of District Court
7. Notice of Appeal by National Association of Letter
Carriers

8. Stipulation

United States Court of Appeals
Second Circuit
Filed Sep. 8, 1977
A. DANIEL FUSARO, Clerk

Docket Yr/Number: 77 0111

Filing Date: 02-24-77

J: 1

N/S: 890

O: 1

Demand \$/Other: Permanent Injunction

Judge Number: 0902

Docket Yr: 77

Docket Number: 0111

PLAINTIFFS
UNITED STATES POSTAL SERVICE

DEFENDANTS
BRENNAN, Patricia H.
BRENNAN, J. Paul d/b/a
P.H. Brennan Hand Delivery

CAUSE T. 39, U.S.C. Sects. 201 & 401(1)

ATTORNEYS

United States Attorney
 (Houlihan)
 Expired 7-14-71
 Thomas Fink, Esq.
 240 Reynolds Arcade Building
 16 East Main Street
 Rochester, New York 14614

James M. Hartman, Esq.
 Harris, Beach, Wilcox, Rubin & Levey
 Two State Street
 Rochester, New York 14614

United States Court of Appeals
 Second Circuit
 Filed Sept. 8, 1977
 A. Daniel Fusaro, Clerk

U.S. Postal Service v. Patricia H. Brennan & 1 etc.

Date	Nr.	Proceedings
Feb. 24	1	Filed complaint.
24		Issued summons and 2 copies. (Given to Mar. in Roch.)
24		JS 5 made
Mar. 1	2	Filed Mar. ret. on S&C served on Patricia H. Brennan & J. Paul Brennan on 2-24-77
25	3	Filed Deft's. answer to the complaint.
Apr. 13	4	Filed motion of National Association of Letter Carriers to intervene as pltf. ret. 4-25-77.

25		Motion by National Assn. of Letter Carriers to intervene as Pltf. Adj. to 5-23-77.
May 23		Filed Defts'. Affidavit.
23		Motion by National Assoc. of Letter Carriers to intervene as Pltf. To be submitted 6-6-77.
June 15	5	Filed Pltf's. notice of motion & motion for summary judgment ret. 6-27-77.
27		Motion by Pltf. for summary judgment. Adj. until 7-11-77.
July 5	6	Filed Defts'. notice of motion for summary judgment ret. 7-11-77.
11		Motion by Pltf. for summary judgment. Motion by Defts. for summary judgment. Adj. until 7-25-77
14	7	Filed Decision & Order denying motion of National Association of Letter Carriers to intervene as a Pltf.-Burke, DJ F-190 (notice to U.S. Atty., Harris, Beach, Wilcox, Rubin & Levey and Mr. Fink)
25		Motion by Pltf. for summary judgment. Motion by defts. for summary judgment. To be submitted 8-8-77.
Aug. 8	8	Filed Notice of Appeal of National Association of Letter Carriers, proposed intervening pltf. (copy mailed to U.S. Atty., Attn. Gerald J. Houlihan, Esq., to Mr. Hartman and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Fink)
Sept. 6	9	Filed Stipulation re record on appeal

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,

Plaintiff

v.

Civ-77-111

PATRICIA H. BRENNAN, J. PAUL
BRENNAN, d/b/a P. H. BRENNAN
HAND DELIVERY,

Defendants

I, JOHN K. ADAMS, Clerk of the United States District Court for the Western District of New York, do hereby certify that the copy of docket entries lettered A and B, together with original papers numbered 1 through 8, constitute the Record on Appeal.

IN WITNESS WHEREOF, I
have hereunto subscribed my name
and affixed the seal of the aforesaid
Court at Buffalo, New York, this
6th day of September, 1977.

/s/ John K. Adams
John K. Adams, Clerk

United States Court of Appeals

Second Circuit

Filed Sep. 8, 1977

A. Daniel Fusaro, Clerk

[Original retained by
Judge Burke
pending motion]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff

-vs-

COMPLAINT
Civil Action No.
77-111

PATRICIA H. BRENNAN
and

J. PAUL BRENNAN)
doing business as)
P. H. BRENNAN HAND DELIVERY,)
Defendants.)

The United States Postal Service, by its attorney, Richard J. Arcara, United States Attorney for the Western District of New York, for its complaint against Patricia H. Brennan and J. Paul Brennan, respectfully alleges:

THE PARTIES

1. The United States Postal Service (U.S.P.S.) is an independent establishment within the Executive Branch of the Government with the power to sue in its official name (Title 39, U.S.C. §201 and §401(1); P.L. 91-375 84 Stat. 720 and 722, August 12, 1970).

2. Upon information and belief, Patricia H. Brennan and J. Paul Brennan, are the operators of a firm transacting business under the name of P.H. Brennan Hand Delivery, having offices at Room 205, Box Building, 36 St. Paul Street, Rochester, New York 14604.

JURISDICTION AND VENUE

3. This is a civil action seeking injunctive and equitable relief to prevent the defendants, their agents and employees, from continuing a business involving the private carriage and delivery of letters.

4. This cause of action arises under Acts of Congress relating to the U.S.P.S. commonly and collectively known as the Private Express Statutes. (Title 18, U.S.C. §§1693-1699, 1724; Title 39, U.S.C. §§ 601-606). The Private Express Statutes generally prohibit the private carriage and delivery of letters.

5. This Court has jurisdiction over this action pursuant to Title 28, U.S.C. Section 1339 (actions relating to the U.S.P.S.) and Title 39, U.S.C. Section 409(a) (action by the U.S.P.S.).

6. Upon information and belief, the acts, omissions and transactions herein complained of occurred within the Western District of New York; the defendants reside within the Western District of New York and venue lies in the Western District of New York pursuant to Title 28, U.S.C. Section 409(b).

STATUTORY AND FACTUAL ALLEGATIONS

7. The U.S.P.S. has as its basic purpose and function the obligation to provide postal services in all areas and to all communities in the entire nation. Title 39, U.S.C. Section 101; 84 Stat. 719.

8. In order to accomplish its objectives, the U.S.P.S. is authorized to adopt, amend and repeal such rules and regulations as it deems necessary. Title 39, U.S.C., Section 401(2), 84 Stat. 722.

9. The Private Express Statutes prohibit the private carriage and delivery of "letters".

10. "Letters" as defined by U.S.P.S. regulations, are

messages directed to specific persons or addresses that are recorded in or on tangible objects. 39 CFR §310.1(a); 39 F.R. 33211-13.

11. Upon information and belief, the defendants, their agents and employees, are engaged in the business of collecting, carrying, and delivering "letters" within the meaning of the Private Express Statutes.

12. Upon information and belief, the defendants, their agents and employees, conduct this business within the City of Rochester, Monroe County, New York.

13. Upon information and belief, the defendants, their agents and employees, have been engaged in this business since March, 1976.

14. The U.S.P.S. has established and maintains post routes, post roads and letter-carrier routes for the collection and delivery of mail throughout the City of Rochester, Monroe County, New York.

15. Upon information and belief, the said business is conducted in the City of Rochester, Monroe County, New York for monetary compensation and takes place over post routes, post roads and letter-carrier routes established for the collection and delivery of mail in the City of Rochester, Monroe County, New York.

16. The activities of the defendants, their agents and employees are contrary to the provisions of the Private Express Statutes.

17. The activities of the defendants, their agents and employees, are not authorized by any exception contained in Title 18, U.S.C. §§1694 and 1696.

18. The activities of the defendants, their agents and employees, are not authorized by any exception contained in Title 39, U.S.C. §§601(a)(1) through 601(a)(6).

19. The activities of the defendants, their agents and employees, are not authorized by any exception or suspension

contained in U.S.P.S. regulations, 39 CFR, Parts 310 and 320.

20. As a result of the business and activities of the defendants, their agents and employees, the U.S.P.S. is deprived of postage revenue to which it is entitled and which, in the aggregate, is vital to the performance of its statutory functions.

21. The plaintiff has no feasible means of determining the amount of revenue which it is losing or has lost as a result of the defendants' activities and, thus, has no adequate remedy at law to recover such lost revenue.

PRAYER FOR RELIEF

WHEREFORE, the U.S.P.S. prays that the Court:

I. Issue a permanent injunction prohibiting the defendants and each of them, and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, from:

A. Advertising or communicating by any means that they will accept, carry, or deliver letters for compensation, unless such advertisement or communication contains a specific statement that no letters, as defined in 39 C.F.R. 310.1(a), will be accepted, carried, or delivered except and unless the letters are accepted, carried, or delivered in accordance with 39 U.S.C. 601(a)(1) - (6); 18 U.S.C. 1694 and 1696; 39 CFR, Part 320; and from

B. Accepting, carrying, or delivering letters, except in accordance with 39 U.S.C. 601(a)(1) - (6); 18 U.S.C. 1694 and 1696; 39 CFR 310.2(b); 310.3(a) - (e); or 39 CFR, Part 320.

II. Grant to the U.S.P.S. such other and further relief as this Court may deem just and proper.

Dated: Rochester, New York
February 23, 1977

RICHARD J. ARCARA
United States Attorney

By: /s/ Gerald J. Houlihan
GERALD J. HOULIHAN
Assistant United States Attorney
233 U.S. Courthouse
Rochester, N.Y. 14614

Form No. 680

No. _____

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE

vs.

PATRICIA H. BRENNAN and
J. PAUL BRENNAN, d/b/a
P.H. BRENNAN HAND DELIVERY

SUMMONS & COMPLAINT

RICHARD J. ARCARA
United States Attorney in and for
the Western District of New York
Office and Post Office Address:
233 U.S. Courthouse
Rochester, N.Y. 14614.

Filed _____, 19 ____
_____, Clerk.
By _____, Deputy.

Filed Feb. 24, 1977
at 4:50 p.m.
John K. Adams, Clerk

SUMMONS IN A CIVIL ACTION CIV. 1 (2-64)
(Formerly D.C. Form No. 45 Rev. (6-49))

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

Civil Action File No.
UNITED STATES POSTAL SERVICE
Plaintiff

v.

Civ-77-111

PATRICIA H. BRENNAN and
J. PAUL BRENNAN, SUMMONS
d/b/a P. H. BRENNAN HAND DELIVERY
Defendants

To the above named Defendants:

You are hereby summoned and required to serve upon

GERALD J. HOULIHAN
Assistant U.S. Attorney

plaintiff's attorney, whose address is

233 U.S. Courthouse
Rochester, N.Y. 14614

an answer to the complaint which is herewith served upon
you, within 20 days after service of this summons upon you,
exclusive of the day of service. If you fail to do so, judgment

by default will be taken against you for the relief demanded in the complaint.

/s/ John K. Adams
Clerk of Court
[SEAL OF COURT]

Date: Feb. 24, 1977

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

MCN:pak 03/17/77 (1)+4

[Original retained by Judge Burke
pending motion]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

-vs-

PATRICIA H. BRENNAN and PAUL
BRENNAN, d/b/a P. H. BRENNAN
HAND DELIVERY,

Defendants.

ANSWER
Civil Action
No. 77-111

Defendants, Patricia H. Brennan and J. Paul Brennan, individually, and defendant Patricia H. Brennan, doing business as P. H. Brennan Hand Delivery, by and through their attorneys, Harris, Beach, Wilcox, Rubin & Levey, as and for their answer to the plaintiff's complaint herein, respectfully allege as follows:

1. Admit the allegations contained in paragraphs of the plaintiff's complaint numbered "1", "3", "4", "5", "6", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18" and "19" thereof.

2. Admit the allegation contained in the paragraph of the plaintiff's complaint numbered "2", except deny that defendant, J. Paul Brennan, is doing business as P. H. Brennan Hand Delivery.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the plaintiff's complaint numbered "7".

4. Deny the allegations contained in the paragraphs of plaintiff's complaint numbered "8", "20" and "21".

**AS AND FOR A FIRST SEPARATE
AND DISTINCT DEFENSE HEREIN,
DEFENDANTS ALLEGE:**

5. That the defendant J. Paul Brennan does not do business under the assumed name of "P. H. Brennan Hand Delivery".

6. That the certificate which was filed by the defendant Patricia H. Brennan in the Office of the Clerk of the County of Monroe, State of New York, clearly indicates that only Patricia H. Brennan is doing business as "P. H. Brennan Hand Delivery".

7. By reason of the foregoing, the complaint should be dismissed as against defendant J. Paul Brennan, as said defendant is an improper party.

**AS AND FOR A SECOND SEPARATE
AND DISTINCT DEFENSE HEREIN,
DEFENDANTS ALLEGE:**

8. Upon information and belief, that the Private Express Statutes, 18 U.S.C. §§1693-1699, 1724 and 39 U.S.C. §§601-606, as enacted and implemented, are un-

constitutional in that the same violate Article 1, Section 8 of the Constitution of the United States, which grants to the Congress power "To establish Post Offices and Post Roads".

9. Upon information and belief, that the Constitution of the United States, neither by its literal terms nor by necessary implication, grants to the Congress the separate and distinct power to prohibit all competition in the establishment of post offices and post roads, nor in the carriage and delivery of letters or mail.

10. Upon information and belief, that the grant of power to Congress in Article 1, Section 8 of the Constitution of the United States is a grant of concurrent but not sole and exclusive power to establish post offices and post roads.

11. Upon information and belief, that any law or laws which establish and/or allows for the maintenance of a federal governmental monopoly concerning the carriage and delivery of any portion of mail in the United States is not a law which is necessary and proper for the carrying into execution of the power of establishing post offices and post roads.

12. Upon information and belief, that the Private Express Statutes, as enacted and implemented, do wrongfully, unlawfully and in violation of the Constitution as aforesaid, establish and maintain a federal government monopoly over the carriage and delivery of letters in the United States and elsewhere.

AS AND FOR A THIRD SEPARATE
AND DISTINCT DEFENSE HEREIN,
DEFENDANTS ALLEGE:

13. Upon information and belief, that the Private Express Statutes, 18 U.S.C. §§1693-1699, 1724 and 39 U.S.C. §§601-606, as enacted and implemented, are unconstitutional in that the same violate the Tenth Amend-

ment to the Constitution of the United States which read as follows:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

14. Upon information and belief, that the power to establish post offices and post roads is not among the powers prohibited by the Constitution to the States in Article 1, Section 10.

15. Upon information and belief, that the Constitution of the United States expresses, neither in literal terms, nor by necessary implication, any prohibition upon the establishment of post offices or post roads, or upon the carriage and delivery of letters or mail, by the States respectively or by the people.

16. Upon information and belief, that any law which is passed by the Congress and which denies to the States respectively or to the people a power which is reserved to them by the Constitution of the United States is in violation of the Tenth Amendment thereto.

17. Upon information and belief, that the Private Express Statutes, as enacted and implemented, do wrongfully, unlawfully, and in violation of the Constitution as aforesaid, deny to the States and to the people a power which is reserved to them by the Tenth Amendment of the Constitution of the United States.

**AS AND FOR A FIFTH SEPARATE
AND DISTINCT DEFENSE HEREIN,
DEFENDANTS ALLEGE:**

18. Upon information and belief, that the Private Express Statutes, 18 U.S.C. §§1693-1699, 1724 and 39 U.S.C. §§601-606, as enacted and implemented, violate the Fifth Amendment to the Constitution of the United States in that

they constitute collectively an arbitrary and capricious Congressional determination or classification which has no rational relationship to the establishment of post offices and post roads.

19. Upon information and belief, that the defendants herein have the right to carry and deliver mail and letters in competition with the United States Postal Service in the same manner and to the same extent that other persons and entities are allowed to compete with respect to classes of mail *other* than first-class mail, and that that right has been denied to the defendants without due process of law, all in violation of the Fifth Amendment to the Constitution of the United States.

FOR A SIXTH SEPARATE
DISTINCT DEFENSE HEREIN,
THE DEFENDANTS ALLEGE:

20. Upon information and belief, that the Private Express Statutes, 18 U.S.C. §§1693-1699, 1724 and 39 U.S.C. §§601-606, as enacted and implemented, are unconstitutional in that they establish the basis for and allow for the maintenance of an unauthorized and unlawful tax upon the American public.

21. Upon information and belief, that solely by virtue of the existence of the Private Express Statutes, which purport to give the United States Postal Service a monopoly over the carriage and delivery of letters, has the Postal Service created postal rates for first-class mail which are clearly in excess of the cost of providing necessary services in connection with said class of mail.

22. Upon information and belief, that the Postal Reorganization Act of 1970 requires, in part, that "Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis", 39 U.S.C. §101(d), and that "... the Postal Service shall not . . . make any undue or unreasonable

discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user." 39 U.S.C. §403(c).

23. Upon information and belief, that the United States Postal Service is without authority to and may not use the Private Express Statutes for the purpose of producing profits on the carriage and delivery of first-class mail (letters), and that any revenues generated with respect to first-class mail for that unauthorized purpose constitute an unnecessary, unauthorized and unlawful tax upon the American public.

WHEREFORE, defendants respectfully pray for judgment in favor of the defendants and against the plaintiff, dismissing the complaint herein, together with the costs and disbursements of this action and such other and further relief as this Court may deem just and proper.

Dated: March 22, 1977.

HARRIS, BEACH, WILCOX
RUBIN & LEVEY

by: /s/ James M. Hartman
JAMES M. HARTMAN
A Member of the Firm

Attorneys for defendants
Office and P.O. Address
Two State Street
Rochester, New York 14614
Telephone: (716) 232-4440

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

-vs-

PATRICIA H. BRENNAN and
PAUL BRENNAN, d/b/a
P. H. BRENNAN HAND DELIVERY,
Defendants.

ORIGINAL

ANSWER
Civil Action No. 77-111

HARRIS, BEACH, WILCOX, RUBIN AND LEVEY
Attorneys for Defendants.

OFFICE & P.O. ADDRESS
Two State Street
Rochester, N.Y. 14614
Telephone: (716) 232-4440

Due personal service of a copy of the within and notice is
admitted this 22nd day of March, 1977.

Gerald J. Houlihan
Asst. U.S. Attorney

Attorney for United States
By: Jean C. Wood, Secretary

Sir:

Please take notice that the within is a copy of
this day in
County Clerk's Office.

Dated , 19

Yours, etc.,

Harris, Beach, Wilcox, Rubin and Levey
Attorneys for

Office & P.O. ADDRESS
Two State Street
Rochester, N.Y. 14614
Telephone: (716) 232-4440

To

Attorney for

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,	)	
Plaintiff,	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER	)	
CARRIERS,	)	
Plaintiff-Intervenor,	)	Civil
v.	)	Action
	)	No. 77-111
PATRICIA H. BRENNAN	)	
and	)	
	)	
J. PAUL BRENNAN	)	
doing business as	)	
P.H. BRENNAN HAND DELIVERY,	)	
Defendants.	)	

NOTICE OF MOTION

TO: ASSISTANT UNITED STATES ATTORNEY,
GERALD J. HOULIHAN
ATTORNEY FOR PLAINTIFF
233 U.S. Court House
Rochester, New York 14614

JAMES M. HARTMAN
HARRIS, BEACH & WILCOX
ATTORNEY FOR DEFENDANTS
Two State Street
Rochester, New York 14614

PLEASE TAKE NOTICE, that the undersigned will
bring the enclosed motion on for hearing before this Court
at the United States Court House, Rochester, New York, on

the 25th day of April, 1977, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

/s/ Thomas Fink
 Thomas Fink
 240 Reynolds Arcade Building
 16 East Main Street
 Rochester, New York 14614
 Attorney for Plaintiff-
 Intervenor

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,	)	
Plaintiff,	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER	)	
CARRIERS,	)	
Plaintiff-Intervenor,	)	Civil
v.	)	Action
	)	No. 77-111
PATRICIA H. BRENNAN	)	
and	)	
J. PAUL BRENNAN	)	
doing business as	)	
P. H. BRENNAN HAND DELIVERY,	)	
Defendants.	)	

MOTION OF NATIONAL ASSOCIATION
 OF LETTER CARRIERS TO
 INTERVENE AS PLAINTIFF

Pursuant to Rule 24, Fed. R. Civ. P., the National Association of Letter Carriers moves the Court for an order

granting it leave to intervene as a plaintiff in this action for the purpose of asserting the claims set forth in the attached complaint in intervention.

In support of this motion, the National Association of Letter Carriers alleges as follows:

1. This is an action for injunctive relief in which plaintiff, the United States Postal Service, seeks to prevent defendants from offering to engage in, or engaging in, the private carriage of letter mail in violation of the Private Express Statutes of the United States, 18 U.S.C. §§ 1694, 1696, and 39 U.S.C. § 601.

2. The National Association of Letter Carriers is a labor organization incorporated under the laws of the State of Tennessee and maintaining its principal place of business in the District of Columbia.

3. Pursuant to provisions of the Postal Reorganization Act (P.L. 91-375, 84 Stat. 719), the National Association of Letter Carriers is recognized by the United States Postal Service as the exclusive bargaining representative for all nonsupervisory Postal Service employees in the city letter carrier craft, of which there are approximately 200,000 throughout the country.

4. The statutes and regulations which this lawsuit seeks to enforce are those which create and enforce the Postal Service's legal monopoly on the carriage of letter mail. If defendants should be successful in this action, the result would be to authorize the carriage by private express of mail which is now, and has traditionally been, defined as "letter" mail subject to the Postal Service monopoly. The resulting loss of mail volume in the Postal Service would cause a loss of work and overtime opportunities for members of the city letter carrier craft represented by the National Association of Letter Carriers.

5. The motion for leave to intervene should therefore be granted in order to permit the National Association of Let-

ter Carriers to defend the economic interests of the employees it represents against the threat to those interests represented by the defendants' unlawful private carriage of letter mail.

Respectfully submitted,

/s/ Mozart G. Ratner
MOZART G. RATNER

/s/ Denis F. Gordon
DENIS F. GORDON
MOZART G. RATNER, P.C.
1900 M Street, N.W., Suite 610
Washington, D.C. 20036
(202) 223-9472

/s/ Thomas Fink
THOMAS FINK
Reynolds Arcade Building
16 East Main Street, Suite 240
Rochester, New York 14614
Attorneys for Plaintiff-Intervenor

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,	)	
Plaintiff,	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER	)	
CARRIERS,	)	
Plaintiff-Intervenor,	)	Civil
v.	)	Action
	)	No. 77-111
PATRICIA H. BRENNAN	)	
and	)	
J. PAUL BRENNAN	)	
doing business as	)	
P. H. BRENNAN HAND DELIVERY,	)	
Defendants.	)	

AFFIDAVIT OF J. JOSEPH VACCA

J. Joseph Vacca, having first been duly sworn, declares as follows:

1. I have held the office of President of the National Association of Letter Carriers (the NALC) since January, 1977. Prior to that time, beginning in 1968, I have held the offices of Assistant Secretary-Treasurer (1968-1972), Vice President (1972-1974), and Executive Vice President (1974-1976) of the NALC.

2. The NALC is a national labor organization with headquarters at 100 Indiana Avenue, N.W., Washington, D.C. It is recognized as the exclusive bargaining representative for approximately 200,000 persons employed as city letter carriers by the United States Postal Service in approximately 6,200 cities throughout the United States.

3. Persons employed as city letter carriers in the Postal

Service are able to achieve that employment only by successful completion of competitive examinations. Such persons typically begin their Postal Service employment as part-time employees, and move into full-time positions as those positions become available.

4. Salaries for full-time Postal Service employees, including city letter carriers, have improved substantially since the effective date of the Postal Reorganization Act of 1970, compared to the salary levels which were in effect before the Act was passed. Postal Service salaries remain relatively low, however. Under the collective bargaining agreement currently in effect for example, the maximum salary a regular full-time city letter carrier can earn is approximately \$15,000, and a letter carrier must have had 8 years of employment with the Postal Service before he or she is eligible for that maximum salary level.

5. Career Postal Service employees, like other career employees of the federal government, can become eligible to receive retirement annuities after long full-time employment with the Postal Service. Such employees may retire with annuities at age 55 if they have 30 years of service, or at age 60 if they have a minimum of 20 years of service. The amount of the annuity for which an employee is eligible increases in proportion to the length of that employee's full-time service in excess of the necessary minimum service.

6. When Congress enacted the Postal Reorganization Act of 1970, it defined, as one of the policy goals of the Postal Service, the establishment and maintenance of compensation levels for Postal Service employees comparable to those paid in the private sector of the economy, with "particular emphasis on opportunities for career advancements . . . and the achievement of worthwhile and satisfying careers" in the Postal Service. See 39 U.S.C. § 101(c). The achievement of these goals is very important to the city letter carriers represented by the NALC.

7. The expectations of city letter carriers and other career postal employees that they will be able to make careers in the Postal Service, at adequate and respectable levels of earnings, and that they may rely on the availability of an earned annuity upon their retirement, and the Postal Service's capacity to fulfill those expectations, are dependent on the Postal Service's maintenance of its statutory monopoly on the conveyance of letter mail. Any substantial diversion to private express carriers of mail now carried exclusively by the Postal Service would have the direct and immediate effect of depriving city letter carriers of productive work they now perform, causing them immediate economic harm in the form of lost earnings, as well as long range economic harm in the form of reduction or, in some cases, loss of expected annuities.

8. Approximately 25,000 of the 200,000 city letter carriers represented by the NALC are "part-time flexible" employees. These persons are career employees whose work schedules require less than full work weeks. They work part-time, at proportionately lower gross levels of compensation, while awaiting the opportunity to convert to full time status. One of the most immediate consequences of the diversion of letter mail to private carriers such as defendants would be the termination of a substantial number of part-time flexible letter carriers from their Postal Service employment. The results, for the terminated employees, would be disastrous. They would, of course, lose the source of their income, as well as losing the benefit of the low-cost group health insurance available to postal employees and any expectation they may have had of achieving full-time, long-term Postal Service careers.

Further affiant sayeth not.

/s/ J. Joseph Vacca
J. JOSEPH VACCA

Subscribed and sworn to before me this 28th day of
March, 1977.

/s/ Matilda J. Austin
NOTARY PUBLIC

My Commission expires: June 30, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,	)	
Plaintiff,	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER	)	
CARRIERS,	)	
Plaintiff-Intervenor,	)	Civil
v.	)	Action
	)	No. 77-111
PATRICIA H. BRENNAN	)	
and	)	
J. PAUL BRENNAN	)	
doing business as	)	
P. H. BRENNAN HAND DELIVERY,	)	
Defendants.	)	

COMPLAINT IN INTERVENTION

The National Association of Letter Carriers, plaintiff-intervenor herein, alleges as follows:

1. This is an action for preliminary and permanent injunctive relief to prevent defendants from engaging in the private carriage of letter mail, in violation of the Constitution and laws of the United States. This Court has

jurisdiction of the action pursuant to 39 U.S.C. § 3409(a) and 28 U.S.C. § 1339.

2. Plaintiff-intervenor National Association of Letter Carriers, AFL-CIO (hereafter "NALC") is a national labor organization which is composed of and represents for purposes of collective bargaining more than 200,000 city letter carriers employed by the United States Postal Service. Its principal place of business is in the District of Columbia. Plaintiff-intervenor brings this action on its own behalf and on behalf of its members as a class.

3. Defendants Patricia H. Brennan and J. Paul Brennan are the operators of a for-profit firm doing business as P. H. Brennan Hand Delivery, which maintains an office at 36 St. Paul Street, Rochester, New York, 14604.

4. Defendants are engaged in the business of collecting and delivering, for compensation, written messages which fall within the meaning of the term "letter", as used in the Private Express Statutes of the United States (18 U.S.C. §§ 1692-1699 and 39 U.S.C. § 601), and as defined in Postal Service Regulations issued under authority of those Statutes (39 C.F.R. Part 310). Defendants conduct this business in the City of Rochester, Monroe County, New York.

5. The provisions of 18 U.S.C. § 1696 make it unlawful for any person to establish "any private express for the conveyance of letters . . . over any post route which is or may be established by law" That section further provides that "conveyance or transmission of letters . . . by private hands without compensation, or by special messenger employed for the particular occasion only" shall not be prohibited, provided that "[w]henever more than twenty-five such letters or packets are conveyed . . . by such special messenger, the requirements of section 601 of Title 39, shall be observed as to each piece."

6. Section 601 of Title 39 provides, in substance, that a

letter may be carried out of the mails if the postage which would have been required to send it through the United States mail has been paid, and that fact is demonstrated by affixing stamps in the required amount to the letter, and cancelling them.

7. The United States Postal Service has established post routes throughout the Rochester, New York area, and in particular such routes have been established throughout the area where the defendants conduct their business.

8. The business of collecting and delivering letters for compensation which defendants have established and in which they engage is prohibited and declared unlawful by the provisions of 18 U.S.C. § 1696, and is not exempted from that prohibition by any other provisions of federal law, or by any provisions of the Regulations issued by the Postal Service pursuant to the Private Express Acts.

9. The unlawful acts and practices of the defendants, as described in paragraphs 4 through 8 above, are causing and will continue to cause irreparable harm to city letter carriers employed by the Postal Service and represented by plaintiff-intervenor, in the following ways, among others:

- a) by diminishing the volume of mail available for delivery by them, thus directly diminishing their work and earnings opportunities;
- b) by depriving the United States Postal Service of revenue to which it is entitled by law, thereby threatening the financial strength of the Postal Service and decreasing its stability and dependability as an employer of city letter carriers.

WHEREFORE, plaintiff-intervenor respectfully requests that the Court grant the following relief:

1. Preliminarily and permanently enjoin the defendants, their agents, employees, successors, and assigns from collecting and delivering, and from offering to collect and deliver, for compensation, any letters or other mailable

matter, as defined in 39 C.F.R. Part 310, unless such collection and delivery is performed in full compliance with the requirements of 39 U.S.C. § 601(a);

2. Award plaintiff-intervenor its costs of suit herein, along with such further or other relief as the interests of justice may require.

Respectfully submitted,

/s/ Mozart G. Ratner
MOZART G. RATNER

/s/ Denis F. Gordon
DENIS F. GORDON

MOZART G. RATNER, P.C.
1900 M Street, N.W., Suite 610
Washington, D.C. 20036
(202) 223-9472

/s/ Thomas Fink
THOMAS FINK

16 East Main Street, Suite 240
Rochester, New York 14614

Attorneys for Plaintiff-
Intervenor

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,

Plaintiff,)

and)

NATIONAL ASSOCIATION OF LETTER)

CARRIERS,)

Plaintiff-Intervenor,)

v.)

Civil
Action
No. 77-111

PATRICIA H. BRENNAN)

and)

J. PAUL BRENNAN)

doing business as)

P.H. BRENNAN HAND DELIVERY,)

Defendants.)

NOTICE OF MOTION, AFFIDAVIT, and COMPLAINT

BECKERMAN, DAVIDSON, COOK & FINK

Attorneys for Plaintiff-Intervenor

Office and Post Office Address

240 Reynolds Arcade Building

Rochester, New York 14614

Telephone: (716) 546-6448

Service of a copy of the within Notice of Motion is hereby
admitted.

Date, 4/13/77

/s/ Harris, Beach, Wilson, Rubin & Levey
by Michael
Attorneys for Defendants- Appellees

/s/ Eugene Welch
EUGENE WELCH
Ass't. U.S. Attorney
4/13/77

Filed: April 13, 1977

3:30 p.m.

John K. Adams, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

-vs-

PATRICIA H. BRENNAN and PAUL
BRENNAN d/b/a P. H. BRENNAN
HAND DELIVERY,
Defendants.

AFFIDAVIT
Civil Action
No. 77-111

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

PATRICIA H. BRENNAN, being duly sworn, deposes and says:

1. I am one of the named defendants in this action, and I am fully familiar with the facts and circumstances herein. I am making this affidavit in opposition to a motion to intervene which has been brought on behalf of the National Association of Letter Carriers.

2. On or about February 24, 1977, an action for permanent injunctive relief was commenced by United States Attorney Richard Arcara, on behalf of the United States Postal Service, against this deponent and J. Paul Brennan, in our alleged representative capacities doing business as P. H. Brennan Hand Delivery.

3. The primary allegation in the Postal Service's complaint is that the defendants are presently operating a business in Rochester, New York which involves the private

carriage and delivery of letter mail for compensation, and that that business allegedly violates certain acts of Congress which are commonly known as the Private Express Statutes (39 U.S.C. §§ 601-606; 18 U.S.C. §§ 1693-1699).

4. In essence, the Private Express Statutes attempt to forbid the existence of private competition with the United States Postal Service with respect to one particular aspect of its operations: the carriage and delivery of "letter mail".

5. On March 22, 1977, an answer was served on behalf of the defendants. The answer admits the major facts and allegations in the Postal Service's complaint and sets forth legal defenses based upon Article 1 and Amendments 5 and 10 of the Constitution of the United States.

6. Upon information and belief, on or about April 13, 1977, counsel for the defendants was served with a notice of motion, affidavit and proposed complaint on behalf of the National Association of Letter Carriers. Through those papers, the Association seeks to intervene as a party plaintiff in this action, on its own behalf and on behalf of its members as a class, to assert the same claims against the defendants as have already been made by the United States Postal Service, and to seek preliminary as well as permanent injunctive relief.

7. It is this deponent's belief that the issues involved in this motion are purely legal in nature. Accordingly, a memorandum of law in opposition to the motion has been prepared on the defendants' behalf, and is being submitted to the Court together with this affidavit. Briefly, there are two legal arguments presented in that memorandum of law:

A. That the motion to intervene should be denied because the National Association of Letter Carriers has no standing to intervene for the purpose of asserting a claim which seeks to enforce federal statutes, the Private Express Statutes, and

B. That the motion to intervene should be denied because the Association has failed to show that it is entitled to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure, either of right or with the Court's permission.

WHEREFORE, your deponent respectfully requests that the Court issue an Order which denies to the National Association of Letter Carriers any right or permission to intervene in this action as a party plaintiff.

/s/ Patricia H. Brennan
PATRICIA H. BRENNAN

Sworn to before me this
19th day of May, 1977

/s/ Patricia A. Maurer
Notary Public
PATRICIA M. MAURER
Notary Public in the State of New York
Monroe County, N.Y.
Commission Expires March 30, 1979.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

-vs-

PATRICIA H. BRENNAN and
PAUL BRENNAN d/b/a P. H.
BRENNAN HAND DELIVERY,
Defendants.

ORIGINAL

AFFIDAVIT

Harris, Beach, Wilcox, Rubin and Levey
Attorneys for Defendants.

Office & P.O. ADDRESS
Two State Street
Rochester, N.Y. 14614
Telephone: (716) 232-4440

Due personal service of a copy of the within and notice is
admitted this
day of , 19 .

Attorney for

Sir: Please take notice that the within is a copy
of this day in
County Clerk's Office.

Dated , 19

Yours, etc.,

Harris, Beach, Wilcox, Rubin and Levey
Attorneys for

OFFICE & P.O. ADDRESS
Two State Street
Rochester, N.Y. 14614
Telephone: (716) 232-4440

To

Attorney for

Filed May 23, 1977
at
JOHN K. ADAMS, Clerk

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

-vs-

CIVIL 77-111

PATRICIA H. BRENNAN and J. PAUL
BRENNAN, d/b/a P. H. BRENNAN
HAND DELIVERY,
Defendants.

DECISION

BURKE, DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

-vs-

CIVIL 77-111

PATRICIA H. BRENNAN and J. PAUL
BRENNAN, d/b/a P. H. BRENNAN
HAND DELIVERY,
Defendants.

Gerald J. Houlihan
Assistant United States Attorney
for the plaintiff

Harris, Beach, Wilcox, Rubin & Levey
2 State Street
Rochester, N.Y. 14614
Attorneys for defendants

Thomas Fink
240 Reynolds Arcade Building
Rochester, N.Y. 14614
Attorney for Intervenor-Applicant

By notice of motion with supporting papers filed April 13, 1977 National Association of Letter Carriers move to intervene as a plaintiff. The application is opposed by the defendants. The motion has been submitted for decision on written memoranda. On due consideration it is hereby

ORDERED that the motion to intervene is denied on the ground that the applicant has no standing to assert its proposed claim, and upon the ground that the applicant has failed to establish that it is entitled to intervene, either as a right or with the authorization of the court.

/s/ Harold P. Burke
HAROLD P. BURKE
United States District Judge

July 12, 1977.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

and

NATIONAL ASSOCIATION OF LETTER CARRIERS,
Plaintiff-Intervenor,

-vs-

Civil Action
No. 77-111

PATRICIA H. BRENNAN, J. PAUL BRENNAN
d/b/a P. H. BRENNAN HAND DELIVERY,
Defendants.

NOTICE OF APPEAL

Notice is hereby given that National Association of Letter Carriers, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of the Honorable Harold P. Burke, denying the National Association of Letter Carriers motion to intervene as a Plaintiff, entered in this action on the 12th day of July, 1977.

Dated: Rochester, New York
August 4, 1977

/s/ Thomas A. Fink
Thomas A. Fink
240 Reynolds Arcade Building
16 East Main Street
Rochester, New York 14614

Of Counsel to Mozart G. Ratner,
P.C.
1900 M Street N.W.
Suite 610
Washington, D.C. 20036
Attorney for National Association
of Letter Carriers

ASSISTANT UNITED STATES ATTORNEY,
GERALD J. HOULIHAN
ATTORNEY FOR PLAINTIFF
233 U.S. Court House
Rochester, New York 14614

JAMES M. HARTMAN
HARRIS, BEACH & WILCOX
ATTORNEY FOR DEFENDANTS
Two State Street
Rochester, New York 14614

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES POSTAL SERVICE,
Plaintiff,

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS,
Plaintiff-Intervenor-Appellant,

-vs-

PATRICIA H. BRENNAN, J. PAUL BRENNAN,
d/b/a P. H. BRENNAN HAND DELIVERY,
Defendants-Appellees.

STIPULATION

IT IS HEREBY STIPULATED by and among the parties hereto that the foregoing papers and pleadings shall constitute the entire record on appeal.

DATED: September 2, 1977

/s/ Richard J. Arcara
by Eugene Welch
Ass't U.S. Attorney

Attorneys for Plaintiff

/s/ Mozart G. Ratner, P.C.
by Beckerman, Davidson
Cook & Fish of Counsel

Attorney for Plaintiff-
Intervenor-Appellant

/s/ Harris, Beach, Wilcox, Rubin &
Levey
by Michael

Attorneys for Defendants-
Appellees

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
Western District of New York
United States Court House
Rochester, New York 14614

Address reply to
United States Attorney
Attention of
Assistant shown below

OUR Reference
GJH:kmq

June 14, 1977

Hon. Harold P. Burke
United States District Judge
United States Courthouse
Rochester, New York 14614

Re: U.S. Postal Service v. Patricia H. Brennan et al.

Dear Judge Burke:

On May 23, 1977, the National Association of Letters argued a motion to intervene in the reference matter. Since that time, the intervening plaintiff and the defendants were allowed to submit briefs in support and in opposition to that motion.

The U.S. Postal Service does not wish to submit a brief in connection with the motion to intervene. However, the U.S. Postal Service does support the position of the National Association of Letter Carriers. They should be allowed to intervene in this action.

The U.S. Postal Service had made a motion for summary judgment which is returnable for argument on June 27,

1977. We anticipate that the defendants will make a cross-motion for summary judgment as well. Both parties agree that there are no factual issues to be resolved and that the complete case can be decided as a matter of law.

I have proceeded to move for summary judgment despite any action on the motion to intervene. I do this because we are quite anxious to have this case resolved and submitted to the Court for decision.

Very truly yours,

RICHARD J. ARCARA
United States Attorney

By: GERALD J. HOULIHAN
Assistant United States Attorney

cc: Michael C. Normoyle, Esq.
Thomas Fink, Esq.
